

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 07-354 (DSD/FLN)

United States of America,

Plaintiff

v.

ORDER

Dempsey Antonio Brown,

Defendant.

Andrew Dunne, United States Attorney's Office, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415, counsel for plaintiff.

Dempsey Antonio Brown, #12076-041, FMC-Rochester, P.O. Box 4000, Rochester, MN 55903, defendant pro se.

This matter is before the court upon the motion by defendant Dempsey Antonio Brown for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). On December 18, 2007, Brown pleaded guilty to possession with intent to distribute more than five grams of a mixture or substance containing a detectable amount of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B). After determining that Brown qualified as a career offender under U.S.S.G. § 4B1.1, the court sentenced Brown to a term of imprisonment of 188 months. Thereafter, Brown moved under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence due to ineffective assistance. The court determined that his counsel was ineffective in failing to file a notice of appeal to challenge his sentence and vacated his sentence. On resentencing, the court

again determined that Brown was a career offender and reimposed a sentence of 188 months. The Eighth Circuit affirmed. Thereafter, Brown moved twice for a sentence reduction based on amendments to the guidelines. Each time, the court concluded that Brown was not eligible for a sentence reduction due to his career offender status.

Brown now moves again for a reduction in his total sentence pursuant to Amendment 782 of the United States Sentencing Guidelines. The government argues that Brown's status as a career offender precludes application of the amendment in this case. The court agrees.

The court may modify a term of imprisonment when the Sentencing Commission subsequently lowers a sentencing range. 18 U.S.C. § 3582(c). In 2014, the Sentencing Commission promulgated Amendment 782, which retroactively reduces the base offense level for many drug offenses by two levels. See U.S.S.G. §§ 1B1.10, 2D1.1(c); id. app. C, amend. 782. The two-level reduction is not applicable, however, where, as in this case, the defendant is sentenced as a career offender. See United States v. Thomas, 775 F.3d 982, 983 (8th Cir. 2014) (holding that Amendment 782 "did not lower the sentencing range established for a career offender by § 4B1.1").

Accordingly, based on the above, **IT IS HEREBY ORDERED** that the motion for sentence reduction pursuant to 18 U.S.C. § 3582(c) [ECF No. 82] is denied.

Dated: April 26, 2016.

s/David S. Doty
David S. Doty, Judge
United States District Court